

Tax Chamber
First-tier Tribunal for Scotland



[2025] FTSTC 6

Ref: FTS/TC/AP/25/0005

Land and Buildings Transaction Tax – 3 year lease review tax return – penalties for late submission – sections 159, 160 and 161 of Revenue Scotland and Tax Powers Act 2014 – Revenue Scotland and Tax Powers Act 2014 (Amendment) Regulations 2020 – Reasonable excuse or special circumstances for failure to make a return – no – appeal dismissed

DECISION NOTICE

IN THE CASE OF

Miss Vidya Sarjoo

Appellant

- and -

Revenue Scotland

Respondent

**TRIBUNAL: ANNE SCOTT
CHARLOTTE BARBOUR**

The Tribunal determined the appeal on 21 May 2025 without a hearing under the provisions of Rule 27 of The First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017 having first read the Notice of Appeal, and attachments, dated 5 February 2025 and Revenue Scotland's Statement of Case, and attachments, received by the Tribunal on 28 March 2025 and the Appellant's Response thereto dated 26 April 2025.

DECISION

Introduction

1. This is an appeal against a Penalty Assessment Notice (“the Notice”) issued by Revenue Scotland to the appellant under section 179 of the Revenue Scotland and Tax Powers Act 2014 (“RSTPA”) on 14 November 2024 in a total sum of £1,000. The penalties comprised:

(a) A £100 penalty for a failure to submit a return on time under sections 159 and 160 RSTPA; and

(b) A £900 penalty for the failure to submit a return after three months under sections 159 and 161 RSTPA. The latter penalty had accrued at a daily rate of £10 for a period of 90 days.

2. The penalties were imposed for the failure to make a Land and Buildings Transaction Tax (“LBTT”) 3-year lease review return (the “3 year LBTT Return”) timeously.

3. The due date for filing the 3 year LBTT Return in question was 18 October 2022 but it was filed on 21 December 2023.

4. The parties were content for the appeal to be categorised as a default paper case and to be decided without a hearing.

The factual background

5. On 13 August 2019, the Appellant entered into a new five year lease for a property in Edinburgh (“the Property”).

6. On 30 September 2019, the Appellant’s agent, who was based in Edinburgh, lodged a LBTT return with Revenue Scotland. The LBTT return intimated that the effective date of the lease transaction for the Property was 18 September 2019. The return assessed that no LBTT was due. The details for the Appellant in the return were the agent’s email address and telephone number and the Appellant’s own home address.

7. Under the heading “Payment and submission” in the return, having confirmed that:

(a) the agent has authority to act for the Appellant,

(b) the agent had been authorised to complete the return,

(c) the Appellant has declared that, with the exception of the relevant date (which the agent certifies) the information is correct and complete.

the last paragraph reads:

"I, the agent of the tenant(s), confirm that I have made my client(s) aware of their obligation to submit a three-yearly lease review return, or an assignation or termination return if such an event occurs before the review date."

The answer given in respect of all of those paragraphs was "Yes".

8. On 11 and 14 December 2023, the Appellant entered into a Minute of Extension and Rent Review Memorandum in respect of the Property; the rent having been due for review on 1 September 2023. Clause 6 stipulated that the landlord and the Appellant would bear their own legal expenses and the Appellant would be responsible for any LBTT that might be due.

9. On 21 December 2023, a 3 year LBTT Return was filed with Revenue Scotland. It was filed by the landlord's solicitor who was based in Dundee. The same contact details as those in the original return were given for the Appellant. As previously, there was no LBTT due. The return included a declaration that the solicitor had the Appellant's authority to file the return and that the Appellant had declared that the information in the return, with the exception of the relevant date which the solicitor certified was correct.

10. On 14 November 2024, Revenue Scotland issued the Notice to the Appellant's home address.

11. On 20 November 2024, the Appellant emailed Revenue Scotland enclosing a copy of the Notice and stating that she had been shocked to receive it. She confirmed that an extension to the lease had been signed the previous year and the formalities had been completed by the landlord's solicitor. She said that she had been unaware of the penalties or the requirement to file the 3 year LBTT Return. She asked for advice.

12. On 28 November 2024, Revenue Scotland replied to the Appellant directing her to their Guidance and explaining that the penalties had been imposed because the 3 year LBTT Return had been filed late.

13. On 29 November 2024, the Appellant emailed Revenue Scotland stating that she wished to contest the penalties on the basis that:

- a. The lease had been agreed with the landlord and "not done through our solicitor" so no-one had made her aware of what she described as changes in the law requiring information to be given to Revenue Scotland.
- b. It was unfair to impose penalties for an obligation of which she had no knowledge.
- c. At no point had she been told about the penalties and those penalties seemed to be extortionate.
- d. Had she been aware of the obligation to file a 3 year LBTT Return she would have done so timeously.
- e. To be told about the obligation 12 months later at the point at which the Notice was issued appeared to have been an error on the part of Revenue Scotland.

14. On 5 December 2024, Revenue Scotland replied asking if the Appellant wished to provide further information and she responded on 9 December 2024.
15. That response stated that:
- (a) She reiterated that the lease had been agreed with the landlord and not done through her solicitor; she had been unaware of any tenant's obligations. Whilst she accepted that that was an error it was not intentional.
 - (b) The Notice dated 14 November 2024 had been received more than two years after the filing date of 18 October 2022. Revenue Scotland's procedure appeared to be to send no reminders and not even the £100 penalty but to wait for two years before assessing the very large £900 penalty.
 - (c) Had she known about the obligation to file she would have done so timeously; in that context the penalties were unfair.
 - (d) No tax was due, she was a tiny trader and the purpose of the legislation was not to penalise small businesses who were unaware of the legislation.
 - (e) The situation had caused a great deal of stress.
16. On 18 December 2024, Revenue Scotland issued a letter by email setting out its View of the Matter which was to uphold the penalties. Revenue Scotland referred to their published Guidance and asked the Appellant for any further representations.
17. On 30 January 2025, Revenue Scotland issued the Review Conclusion letter and the outcome of the review was to uphold the penalties.
18. The Appellant's appeal to the Tribunal dated 5 February 2025 was received on 13 February 2025.
19. The appeal reiterated many of the previous arguments. In particular, the Appellant stated that she had not been aware of the need to make a 3 year LBTT Return and she had never personally done so. Revenue Scotland had had her details for five years but had never sent any reminders or warning letters. She had not had the opportunity to avoid the penalties. Prior notice should have been given.
20. The Response to the Statement of Case stated that
- (a) She had recently received a reminder letter for the most recent 3 year LBTT Return and had responded immediately. Had that happened in 2022 she would have done the same and avoided the £1000 penalties.
 - (b) She argued that the fact that Revenue Scotland had now issued a reminder indicated that they "are well aware that the previous process of not informing us that we were liable to penalties was erroneous".
 - (c) It was unfair to accrue penalties without first receiving a written warning.

The Legislation

21. The requirement to file the 3 year LBTT Return is found in paragraph 10, Schedule 19, LBTTA. The penalties arise in consequence of sections 159, 160 and 161 RSTPA. These provisions are not in dispute.

22. Section 160 RSTPA provides for a £100 penalty if a return is filed late. Section 161 RSTPA provides that if a failure to make a return continues after the end of the period of three months after the month beginning with the penalty date, a person is liable for a further penalty of £10 for each day that the failure continues during the period of 90 days beginning with the day after the end of the period described in section 161(1)(a).

23. Section 177 RSTPA provides that “Revenue Scotland may reduce the penalty... if it thinks it right to do so because of special circumstances”. The full text of section 177 is set out at Appendix 1 but:

a. Section 177(2) makes it explicit that special circumstances does not include the ability to pay.

b. Section 177(3) specifies that reducing a penalty includes:

- “(a) remitting a penalty entirely,
- i. suspending a penalty, and
- ii. agreeing a compromise in relation to proceedings for a penalty.”

24. Section 178 RSTPA provides that liability to a penalty will not arise if there is a reasonable excuse for the failure to make a payment timeously. The full text is set out at Appendix 2.

25. For completeness we observe that section 175 RSTPA provides that “Revenue Scotland may reduce the penalty” where a taxpayer discloses information that has been withheld by a failure to make a return. However, there was no such disclosure in this case.

26. Section 244(2) RSTPA provides that:-

“The Tribunal is to determine the matter in question and may conclude that Revenue Scotland’s view of the matter in question is to be:-

- (a) Upheld,
- (b) Varied, or
- (c) Cancelled.”

27. The Revenue Scotland and Tax Powers Act 2014 (Amendment) Regulations 2020 deal with failure to make a tax return where the filing date occurs on or after

11 March 2020 (item 1 of the table in section 159 RSTPA). The effect of the Regulations is that there is no need for a notification to be made under section 161 RSTPA before an assessment can be made under section 179 RSTPA.

28. Section 180 RSTPA provides for the time limit for issuing penalty assessments for a failure to file a return on time. The full text is set out at Appendix 3. In summary, the time limit is the later of two years from the filing date or, where it is ascertained that there is no tax due, a period of 12 months from the date when Revenue Scotland is told that there is no liability to tax.

Discussion

29. Revenue Scotland has the burden of proving that the penalties were properly imposed. Revenue Scotland has produced both of the LBTT returns and it is clear from the terms thereof that there was a lease. The terms of the 3 year LBTT Return indicates that the lease had not been either terminated or assigned at the relevant date.

30. The 3 year LBTT Return was due to be filed by 18 October 2022 and it is not disputed that it was filed late. Both sections 159 and 160 RSTPA apply which means that the Appellant is liable to pay the £100 penalty. Since the failure to file the return continued beyond the three-month period specified in section 161 RSTPA, the Appellant is therefore liable to pay the £900 penalty.

31. The 3 year LBTT Return was filed on 21 December 2023 and stated that there was no tax due. Accordingly, Revenue Scotland had until 21 December 2024 to issue the Notice and they did so on 14 November 2024.

32. We have therefore found that the penalties were correctly and timeously imposed and in the correct amounts.

33. The question for decision now is whether Revenue Scotland are correct in stating that the penalties should be upheld and neither varied nor cancelled. Their argument is that there are no grounds to justify a reduction of the penalty for disclosure or special circumstances or waiver as a result of reasonable excuse.

34. Therefore, the burden of proof now turns to the Appellant. Although the legislation commences with special circumstances, it is in fact appropriate to start with consideration of reasonable excuse since, if that is established, there is no need to consider special circumstances. There was no disclosure in this case.

Reasonable excuse

35. Revenue Scotland rightly accept that in certain circumstances ignorance of the law can amount to a reasonable excuse and, in that regard, they cite paragraphs 81 and 82 of *Perrin v HMRC* [2018] UKUT 0156 (TCC). We agree with the Upper Tribunal. Those paragraphs read:

“Final comments

81. When considering a ‘reasonable excuse’ defence, therefore, in our view the FTT can usefully approach matters in the following way:

- (1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer’s own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).
- (2) Second, decide which of those facts are proven.
- (3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question ‘was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?’
- (4) Fourth, having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased). In doing so, the FTT should again decide the matter objectively, but taking into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times.

82. One situation that can sometimes cause difficulties is when the taxpayer’s asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that ‘ignorance of the law is no excuse’, and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long. *The Clean Car Co* itself provides an example of such a situation.”

36. The primary issues here, which are linked, are:

- a. whether the Appellant’s lack of awareness of the need to file the 3 year LBTT Return could, of itself, constitute a reasonable excuse. In other words, can ignorance of the law in the sense of ignorance of an obligation imposed by the law, constitute a reasonable excuse for this Appellant in these circumstances?, and

b. whether the suggestion that Revenue Scotland had failed to tell the Appellant to file the return could amount to a reasonable excuse.

37. As can be seen from paragraph 7 above, the original LBTT Return suggests that the Appellant did know about the requirement for such a return.

38. Although the Appellant states that she did not file the return personally, the information about her home address suggests that the agent did have instructions from the Appellant. The landlord has lived in Dundee at all times. The solicitor who filed the 3 year LBTT Return was based in Dundee. The Appellant lives in Edinburgh and the agent was Edinburgh based. We do not know if that agent was acting for both parties but the very clear implication is that the agent in both instances was acting for the Appellant when lodging the returns.

39. If the LBTT return was inaccurate in indicating that the Appellant had been told about the first 3 year LBTT Return, then that cannot amount to a reasonable excuse. The Upper Tribunal in *HMRC v Katib* [2019] UKUT 189 (TCC), albeit dealing with different circumstances, made it clear at paragraph 58 that:

“It cannot be the case that a greater degree of adviser incompetence improves one’s chances of an appeal, either by enabling the client to distance himself from the activity or otherwise.”

40. That echoes the decision of Judge Bishopp in the Upper Tribunal in *Ryan v HMRC* [2012] UKUT 9 (TCC) where, in relation to an appeal against the imposition of a penalty for the late filing of a return, he said at paragraph 6 that:

“The plain purpose of the legislation is to encourage the prompt submission of returns by imposing penalties on those who submit them late. The penalty is imposed on the person concerned, and not upon his solicitor or any other representative. The purpose of the legislation would be defeated if a penalty could be escaped by the expedient of placing the blame on a dilatory solicitor. If Mr Ryan believes he has been let down by his solicitor, his remedy is to take the matter up with the solicitor.”

41. Accordingly, and in the same vein, the fact that the agent may not have advised the Appellant of the ongoing obligation to file the returns cannot amount to a reasonable excuse.

42. LBTT is a self-assessed tax. There is no evidence that the Appellant made any enquiries about LBTT or the Appellant’s obligations in that regard. The suggestion that Revenue Scotland should have sent reminders or otherwise told the Appellant about the obligation to file a return is simply not correct. Revenue Scotland are under no obligation to send reminders, albeit they have done so in 2025. The fact that no reminder was sent cannot amount to a reasonable excuse.

43. The Tribunal is a creature of statute and therefore has only the powers given to it by statute. Accordingly, we can only consider whether the 3 year LBTT Return was filed late and, if so, whether there was a reasonable excuse for that failure or there were special circumstances.

44. For the reasons given, none of the arguments advanced by the Appellant amount to a reasonable excuse.

Special Circumstances

45. As we have indicated at paragraph 22 above, an inability to pay cannot amount to special circumstances.

46. In a number of Decisions of this Tribunal in relation to penalties, the law on special circumstances has been set out at length. We do not intend to repeat that here. In brief summary, we endorse the words of the UK Tribunal in *Collis v HMRC* [2011] UKFTT 588 (TC) in which the Tribunal said at paragraph 40:

“To be a special circumstance the circumstance in question must operate on the particular individual, and not be a mere general circumstance that applies to many taxpayers by virtue of the schemes or provisions themselves”.

47. The purpose of the legislation is to ensure that tax returns are filed on time by all taxpayers and not larger businesses.

48. Unfortunately, none of the circumstances set out by the Appellant, including the fact that the penalties are viewed as “extortionate” are either unusual or uncommon.

Fairness

49. Like many others have done, it is argued by the Appellant that the penalty regime is unfair.

50. We cannot be concerned with the penalty scheme as a whole but must confine ourselves to looking at the penalty at an individual level.

51. In circumstances in which the appellant has not submitted a return for the Property, we cannot find the penalties to be disproportionate when balanced against the objective of the relevant legislative provisions which is to ensure timeous filing of returns.

52. In *HMRC v Hok* [2012] UKUT 363 (TCC) the Upper Tribunal reiterated that the First-tier Tribunal’s jurisdiction is limited to those functions conferred on it by statute. At paragraphs 56 to 58 of that decision the Upper Tribunal said:

“56. Once it is accepted, as for the reasons we have given it must be, that the First-tier Tribunal has only that jurisdiction which has been conferred on it by statute, and can go no further, it does not matter whether the Tribunal purports to exercise a judicial review function or instead claims to be applying common law principles; neither course is within its jurisdiction. As we explain at paras 36 and 43 above, the Act gave a restricted judicial review function to the Upper Tribunal, but limited the First-tier Tribunal’s jurisdiction to those functions conferred on it by statute. It is impossible to read the legislation in a way which extends its jurisdiction to include—whatever one chooses to call it—a power to override a statute or supervise HMRC’s conduct.

57. If that conclusion leaves ‘sound principles of the common law ... languishing outside the Tribunal room door’, as the judge rather colourfully put it, the remedy is not for the Tribunal to arrogate to itself a jurisdiction which Parliament has chosen not to confer on it. Parliament must be taken to have known, when passing the 2007 Act, of the difference between statutory, common law and judicial review jurisdictions. The clear inference is that it intended to leave supervision of the conduct of HMRC and similar public bodies where it was, that is in the High Court, save to the limited extent it was conferred on this Tribunal.

58. It follows that in purporting to discharge the penalties on the ground that their imposition was unfair the Tribunal was acting in excess of jurisdiction, and its decision must be quashed. The appeal is allowed and we determine that all five of the penalties are due.”

53. That quotation was endorsed by this Tribunal in *Dr Goudie and Dr Sheldon v Revenue Scotland* [2018] FTTSC 3 at paragraph 67.

Conclusion

54. For all these reasons we do not accept that the Appellant has established either a reasonable excuse for the failure to file the 3 year LBTT Return or any special circumstances.

55. Accordingly, the appeal is dismissed and the penalties upheld.

56. This document contains full findings of fact and reasons for the decision. Any party dissatisfied this decision has the right to apply for permission to appeal on a point of law pursuant to Rule 38 of the First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017. In terms of Regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016, any such application must be received by this Tribunal within 30 days from the date this decision is sent to that party.

ANNE SCOTT

President

RELEASE DATE: 22 May 2025

177 Special reduction in penalty under Chapter 2

- (1) Revenue Scotland may reduce a penalty under this Chapter if it thinks it right to do so because of special circumstances.
- (2) In subsection (1) "special circumstances" does not include—
 - (a) ability to pay, or
 - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
- (3) In subsection (1) the reference to reducing a penalty includes a reference to—
 - (a) remitting a penalty entirely,
 - (b) suspending a penalty, and
 - (c) agreeing a compromise in relation to proceedings for a penalty.
- (4) In this section references to a penalty include references to any interest in relation to the penalty.
- (5) The powers in this section also apply after a decision of a tribunal or a court in relation to the penalty.

178 Reasonable excuse for failure to make return or pay tax

(1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a return, liability to a penalty under sections 159 to 167 does not arise in relation to that failure.

(2) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to make a payment, liability to a penalty under sections 168 to 173 does not arise in relation to that failure.

(3) For the purposes of subsections (1) and (2)—

- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,
- (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
- (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

180 Time Limit for assessment of penalties under Chapter 2

- (1) An assessment of a penalty under this Chapter in respect of any amount must be made on or before the later of date A and (where it applies) date B.
- (2) Date A is the last day of the period of 2 years beginning with—
 - (a) in the case of failure to make a return, the filing date, or
 - (b) in the case of failure to pay tax, the last date on which payment may be made without paying a penalty.
- (3) Date B is the last day of the period of 12 months beginning with—
 - (a) in the case of failure to make a return—
 - (i) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, or
 - (ii) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil, or
 - (b) in the case of failure to pay tax—
 - (i) the end of the appeal period for the assessment of the amount of tax in respect of which the penalty is assessed, or
 - (ii) if there is no such assessment, the date on which that amount of tax is ascertained.
- (4) In subsection (3)(a)(i) and (b)(i) “appeal period” means the period during which—
 - (a) an appeal could be brought, or
 - (b) an appeal that has been brought has not been determined or withdrawn.